IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

Bail Appl..No. 7329 of 2007()

(CRIME NO.326/07 OF THE THEKKUM BHAGOM POLICE STATION, IN CHAVARA)

PETITIONERS/ACCUSED:

1. **SANKARA PILLAI, MAMPUZHA THEKKETHIL, KOYIVILA VADAKKU, THEVALAKKARA VILLAGE, KARUNAGAPPALLY TALUK.**

2. **PARAMESHWARAN PILLAI, MAMPUZHA THEKKETHIL, KOYIVILA VADAKKU, THEVALAKKARA VILLAGE, KARUNAGAPPALLY TALUK.**

3. **THANKACHY, MAMPUZHA THEKKETHIL, KOYIVILA VADAKKU, THEVALAKKARA VILLAGE, KARUNAGAPPALLY TALUK.**

BY ADV. SRI.B.RADHAKRISHNA PILLAI
SMT. S. AMBIKA DEVI
SMT. REKHA K.B.

RESPONDENTS:

STATE REPRESENTED BY THE PUBLIC PROSECUTOR REPRESENTING THE S.I. OF POLICE, THEKKUMBHAGOM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R. BASANT, J.

B.A. No. 7329 OF 2007

Dated this the 22nd day of November, 2007

O R D E R

Application for anticipatory bail. Petitioners are accused Nos.1 to 3 in a crime registered for offences punishable, inter alia, under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused 1 and 2 are persons aged 68 and 81 years respectively, it is submitted. The 3rd petitioner is a woman. Accused Nos.1 and 2 are afflicted with diseases also, it is submitted.

2. According to the learned counsel for the petitioners, the petitioners are absolutely innocent. The complainant has political animosity against the petitioners and only because of such strain, such crime has been registered against the petitioners. The petitioners are innocent and directions under section 438 Cr.P.C. may be issued in favour of the petitioners, it is submitted.

3. In the wake of the embargo under section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act which proscribes the grant of anticipatory bail in crimes/prosecutions under the SC and ST (PA) Act, the learned

counsel for the petitioner only submits that the learned Magistrate may be directed to dispose of the applications for bail on merits, in accordance with law and expeditiously. The learned counsel apprehends that the learned Magistrate may not consider the application for bail on merits and in accordance with law in view of the fact that the offence is triable exclusively by a Special/Sessions Court under section 14 of the said Act.

4. This Court has time and again repeated that the mere fact that the offences under Section 3 of the SC and ST(PA) Act is triable exclusively by a Court of session is no reason for the learned Magistrate to invoke his jurisdiction under section 437 Cr.P.C. The decisions in ***Ali Vs. State of Kerala*** *[2000 (2) KLT 280];* **Shanu Vs. State of Kerala** [2000 (3) KLT 452]; ***Krishnakumar Vs. State of Kerala*** [2005 (1) KLD (Cri) 42] and ***P.P.Kader Vs. State of Kerala*** [2005 (1) KLD (Cri) 250] make the position crystal clear. The decision in ***Alice George Vs. Deputy Superintendent of Police*** [2003 (1) KLT 339] obliges the Magistrate to consider the application for bail expeditiously.

5. This petition is, in these circumstances, dismissed but with the specific observation that if the petitioners surrender before

the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously – on the date of surrender itself in the light of the decisions cited above.

(R.BASANT, JUDGE)

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